

Chapter 3

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3 Filing with the Immigration Court

3.1 Delivery and Receipt

(a) Filing. — Documents are filed either with the Immigration Judge during a hearing or with the Immigration Court outside of a hearing. For documents filed outside of a hearing, the filing location is usually the same as the hearing location. However, for some hearing locations, documents are filed at a separate “Administrative Control Court.” See subsection (i), below, 8 C.F.R. §§ 1003.31, 1003.13.

(i) Administrative Control Courts. — “Administrative Control Courts” maintain the Records of Proceeding for hearings that take place at certain remote hearing locations. A list of these locations, and of the Administrative Control Courts responsible for these locations, is available on the Executive Office for Immigration Review website at www.usdoj.gov/eoir.

(ii) Shared administrative control. — In some instances, two or more Immigration Courts share administrative control of cases. Typically, these courts are located close to one another, and one of the courts is in a prison or other detention facility. Where courts share administrative control of cases, documents are filed at the hearing location. Cases are sometimes transferred between the courts without a motion to change venue. However, if a party wishes for a case to be transferred between the courts, a motion to change venue is required. See Chapter 5.10(c) (Motion to change venue). A list of courts with shared administrative control is available on the Executive Office for Immigration Review website at www.usdoj.gov/eoir.

(iii) Receipt rule. — An application or document is not deemed “filed” until it is received by the Immigration Court. All submissions received by the Immigration Court are date-stamped on the date of receipt. Chapter 3.1(c) (Must be “timely”). The Immigration Court does not observe the “mailbox rule.” Accordingly, a document is not considered filed merely because it has been received by the U.S. Postal Service, commercial courier, detention facility, or other outside entity.

(iv) Postage problems. — All required postage or shipping fees must be paid by the sender before an item will be accepted by the Immigration Court. When using a courier or similar service, the sender must properly complete the packing slip, including the label and billing information. The Immigration Court does not pay postage due or accept mailings without sufficient postage. Further, the Immigration Court does not accept items shipped by courier without correct label and billing information.

(v) Filings. — Filings sent through the U.S. Postal Service or by courier should be sent to the Immigration Court's street address. Hand-delivered filings should be brought to the Immigration Court's public window during that court's filing hours. Street addresses and hours of operation for the Immigration Courts are available in on the Executive Office for Immigration Review website at www.usdoj.gov/eoir. Addresses are also available in Appendix A (Immigration Court Addresses).

Given the importance of timely filing, parties are encouraged to use courier or overnight delivery services, whenever appropriate, to ensure timely filing. However, the failure of any service to deliver a filing in a timely manner does not excuse an untimely filing. See Chapter 3.1(c)(iii) (Delays in delivery).

(vi) Separate envelopes. — Filings pertaining to unrelated matters should not be enclosed in the same envelope. Rather, filings pertaining to unrelated matters should be sent separately or in separate envelopes within a package.

(vii) Faxes and e-mail. — The Immigration Court does not accept faxes or other electronic submissions unless the transmission has been specifically requested by the Immigration Court staff or the Immigration Judge. Unauthorized transmissions are not made part of the record and are discarded without consideration of the document or notice to the sender.

(viii) E-filing. — The Immigration Court does not have electronic filing, or "e-filing," at this time. Although certain forms can be completed on-line, forms must be printed and submitted as hard copies to the Immigration Court. See Chapter 11(Forms).

(b) Timing of submissions. — Filing deadlines depend on the stage of proceedings and whether the alien is detained. Deadlines for filings submitted while proceedings are pending before the Immigration Court (for example, applications, motions, responses to motions, briefs, pre-trial statements, exhibits, and witness lists) are as specified in subsections (i), (ii), and (iii), below, unless otherwise specified by the Immigration Judge. Deadlines for filings submitted after proceedings before the Immigration Court have been completed are as specified in subsections (iv) and (v), below.

Deadlines for filings submitted while proceedings are pending before the Immigration Court depend on whether the next hearing is a master calendar or an individual calendar hearing.

Untimely filings are treated as described in subsection (d)(ii), below. Failure to timely respond to a motion may result in the motion being deemed unopposed. See

Chapter 5.13 (Response to Motion). “Day” is constructed as described in subsection (c), below.

(i) Master calendar hearings. —

(A) Non-detained aliens. — For master calendar hearings involving non-detained aliens, filings must be submitted at least fifteen (15) days in advance of the hearing if requesting a ruling at or prior to the hearing. Otherwise, filings may be made either in advance of the hearing or in open court during the hearing.

When a filing is submitted at least fifteen days prior to a master calendar hearing, the response must be submitted within ten (10) days after the original filing with the Immigration Court. If a filing is submitted less than fifteen days prior to a master calendar hearing, the response may be presented at the master calendar hearing, either orally or in writing.

(B) Detained aliens. — For master calendar hearings involving detained aliens, filing deadlines are as specified by the Immigration Court.

(ii) Individual calendar hearings. —

(A) Non-detained aliens. — For individual calendar hearings involving non-detained aliens, filings must be submitted at least thirty (30) days in advance of the hearing. This provision does not apply to exhibits or witnesses offered solely to rebut and/or impeach. Responses to filings that were submitted in advance of an individual calendar hearing must be filed within fifteen (15) days after the original filing with the Immigration Court.

(B) Detained aliens. — For individual calendar hearings involving detained aliens, filing deadlines are as specified by the Immigration Court.

(iii) Asylum applications. — Asylum applications are categorized as either “defensive” or “affirmative.” A defensive asylum application is filed with the Immigration Court by an alien already in proceedings. An affirmative asylum application is filed with the Department of Homeland Security (DHS) Asylum Office by an alien not in removal proceedings. If the DHS Asylum Office declines to grant an affirmative asylum application, removal proceedings may be initiated. In that case, the asylum application is referred to an Immigration Judge, who may grant or deny the application. See 8 C.F.R. § 1208.4.

An alien filing an application for asylum should be mindful that the application must be filed within one year after the date of the alien's arrival in the United States, unless certain exceptions apply. INA § 208(a)(2)(B), 8 C.F.R. § 1208.4(a)(2).

(A) Defensive applications. — Defensive asylum applications are filed in open court at a master calendar hearing.

(B) Affirmative applications. — Affirmative asylum applications referred to an Immigration Court by the DHS Asylum Office are contained in the Record of Proceedings. Therefore, there is no need for the alien to re-file the application with the Immigration Court. After being placed in Immigration Court proceedings, the alien may amend his or her asylum application. For example, the alien may submit amended pages of the application, as long as all changes are clearly reflected. Such amendments must be filed by the usual filing deadlines, provided in subsection (b)(i), above. The amendment should be accompanied by a cover page with an appropriate caption, such as "AMENDMENT TO PREVIOUSLY FILED ASYLUM APPLICATION." See Appendix F (Sample Cover Page).

(iv) Reopening and reconsideration. — Deadlines for filing motions to reopen and motions to reconsider with the Immigration Court are governed by statute and regulation. See Chapter 5 (Motions). Responses to such motions are due within fifteen (15) days after the motion was received by the Immigration Court, unless otherwise specified by the Immigration Judge.

(v) Appeals. — Appeals must be received by the Board of Immigration Appeals no later than 30 calendar days after the Immigration Judge renders an oral decision or mails a written decision. See 8 C.F.R. § 1003.38, Chapter 6 (Appeals of Immigration Judge Decisions).

(vi) Specific deadlines. — The deadlines for specific types of filings are listed in Appendix D (Deadlines).

(c) Must be "timely." — The Immigration Court places a date stamp on all documents it receives. Absent persuasive evidence to the contrary, the Immigration Court's date stamp is controlling in determining whether a filing is "timely." Because filings are date-stamped upon arrival at the Immigration Court, parties should file documents as far in advance of deadlines as possible.

(i) Construction of "day." — All filing deadlines are calculated in calendar days. Thus, unless otherwise indicated, all references to "days" in this manual refer to calendar days rather than business days.

(ii) Computation of time. — Parties should use the following guidelines to calculate deadlines.

(A) Deadlines on specific dates. — A filing may be due by a specific date. For example, an Immigration Judge may require a party to file a brief by June 21, 2008. If such a deadline falls on a Saturday, Sunday, or legal holiday, the deadline is construed to fall on the next business day.

(B) Deadlines prior to hearings. — A filing may be due a specific period of time *prior to* a hearing. For example, a party may be required to file a document at least 30 days before an individual calendar hearing. In such cases, the day of the hearing counts as “day 0” and the day before the hearing counts as “day 1.” Because deadlines are calculated using calendar days, Saturdays, Sundays, and legal holidays are counted. If, however, such a deadline falls on a Saturday, Sunday, or legal holiday, the deadline is construed to fall on the next business day.

(C) Deadlines following hearings. — A filing may be due within a specific period of time *following* a hearing. For example, a party may be required to file a document within 15 days after a master calendar hearing. In such cases, the day of the hearing counts as “day 0” and the day following the hearing counts as “day 1.” Because deadlines are calculated using calendar days, Saturdays, Sundays, and legal holidays are counted. If, however, such a deadline falls on a Saturday, Sunday, or legal holiday, the deadline is construed to fall on the next business day.

(D) Deadlines following Immigration Judges’ decisions. — Pursuant to statute or regulation, a filing may be due within a specific period of time following an Immigration Judge’s decision. For example, appeals, motions to reopen, and motions to reconsider must be filed within such deadlines. See 8 C.F.R. §§ 1003.38(b), 1003.23. In such cases, the day the Immigration Judge renders an oral decision or mails a written decision counts as “day 0.” The following day counts as “day 1.” Statutory and regulatory deadlines are calculated using calendar days. Therefore, Saturdays, Sundays, and legal holidays are counted. If, however, a statutory or regulatory deadline falls on a Saturday, Sunday, or legal holiday, the deadline is construed to fall on the next business day.

(E) Deadlines for responses. — A response to a filing may be due within a specific period of time following the original filing. For example, a party may be required to file a response to a motion within 15 days after the motion was filed with the Immigration Court. In such cases, the day the

original filing is received by the Immigration Court counts as “day 0.” The following day counts as “day 1.” Because deadlines are calculated using calendar days, Saturdays, Sundays, and legal holidays are counted. If, however, such a deadline falls on a Saturday, Sunday, or legal holiday, the deadline is construed to fall on the next business day.

(iii) Delays in delivery. — Postal or delivery delays do not affect existing deadlines. Parties should anticipate all postal or delivery delays, whether a filing is made by first class mail, priority mail, or overnight or guaranteed delivery service. The Immigration Court does not excuse untimeliness due to postal or delivery delays, except in rare circumstances. See Chapter 3.1(a)(iii) (Receipt rule).

(iv) Motions for extensions of filing deadlines. — Immigration Judges have the authority to grant motions for extensions of filing deadlines that are not set by regulation. A deadline is only extended upon the *granting* of a motion for an extension. Therefore, the mere filing of a motion for an extension does not excuse a party’s failure to meet a deadline. Unopposed motions for extensions are not automatically granted.

(A) Policy. — Motions for extensions are not favored. In general, conscientious parties should be able to meet filing deadlines. In addition, every party has an ethical obligation to avoid delay.

(B) Deadline. — A motion for an extension should be filed as early as possible, and must be received by the original filing deadline.

(C) Contents. — A motion for an extension should be filed with a cover page labeled “MOTION FOR EXTENSION” and comply with the requirements for filing. See Chapter 3 (Filing with the Immigration Court), Appendix F (Sample Cover Page). A motion for an extension should clearly state:

- when the filing is due
- the reasons(s) for requesting an extension
- that the party has exercised due diligence to meet the current filing deadline
- that the party will meet a revised deadline

- if the parties have communicated, whether the other party consents to the extension

(d) Defective filings. — Filings may be deemed defective due to improper filing, untimely filing, or both.

(i) Improper filings. — If an application, motion, brief, exhibit, or other submission is not properly filed, it is rejected by the Immigration Court with an explanation for the rejection. Parties wishing to correct the defect and refile after a rejection must do so by the original deadline, unless an extension has been granted by the Immigration Court. See Chapters 3.1(b) (Timing of submissions), 3.1(c) (Must be “timely”). See also subsection (ii), below. The term “rejected” means that the filing is returned to the filing party because it is defective and therefore will not be considered by the Immigration Judge. It is not an adjudication of the filing or a decision regarding its content. Examples of improper submissions include:

- if a fee is required, failure to submit a fee receipt or fee waiver request
- failure to include a proof of service upon the opposing party
- failure to comply with the language, signature, and format requirements
- illegibility of the filing

If a document is improperly filed but not rejected, the Immigration Judge retains the authority to exclude it from evidence or take other appropriate action.

(ii) Untimely filings. — If a submission is untimely, it will not be considered, except as provided in subsection (iii), below. Accordingly, parties should be mindful of the requirements regarding timely filings. See Chapters 3.1(b) (Timing of submissions), 3.1(c) (Must be “timely”).

Acceptance of an untimely filing by the Immigration Court does not mean that the filing will be admitted into evidence or otherwise considered by the Immigration Judge. Untimely filings are generally treated as follows:

- if an application for relief is untimely, the alien’s interest in that relief is deemed waived or abandoned

- if a motion is untimely, it is denied
- if a brief or pre-trial statement is untimely, the issues in question are deemed waived or conceded
- if an exhibit is untimely, it is not entered into evidence
- if a witness list is untimely, the witnesses on the list are barred from testifying
- if a response to a motion is untimely, the motion is deemed unopposed

(iii) Motions to accept untimely filings. — If a party wishes the Immigration Judge to consider a filing despite its untimeliness, it must be accompanied by a motion to accept the untimely filing. A motion to accept an untimely filing must explain the reasons for the late filing and show good cause for acceptance of the filing. In addition, the motion must include documentary evidence, such as affidavits and declarations under the penalty of perjury. If the submission is an exhibit, the motion should demonstrate that the exhibit is material and could not have been discovered or presented before the filing deadline. If a witness list, the motion should demonstrate that the witness's testimony is material and was not available and could not have been discovered or presented by the filing deadline.

(iv) Natural or manmade disasters. — Natural or manmade disasters may occur that create unavoidable filing delays. Parties wishing to file untimely documents after a disaster must comply with the requirements of subsection (iii), above.

(e) Filing receipts. — The Immigration Court does not issue receipts for filings. Parties are encouraged, however, to obtain and retain corroborative documentation of delivery, such as mail delivery receipts or courier tracking information. As a precaution, parties should keep copies of all items sent to the Immigration Court.

(f) Conformed copies. — A time-and-date stamp is placed on each filing received by the Immigration Court. If the filing party desires a "conformed copy" (i.e., a copy of the filing bearing the Immigration Court's time-and-date stamp), the original must be accompanied by an accurate copy of the filing, prominently marked "CONFORMED COPY; RETURN TO SENDER." If the filing is voluminous, only a copy of the cover page and table of contents needs to be submitted for confirmation. The filing must also contain a self-addressed stamped envelope or comparable return delivery packaging. The Immigration Court does not return conformed copies without a prepaid return envelope or packaging.

3.2 Service on the Opposing Party

(a) Service requirements. — For all filings before the Immigration Court, a party must:

- provide, or “serve,” an identical copy on the opposing party (or, if the party is represented, the party’s representative), and
- except for filings served during a hearing or jointly-filed motions agreed upon by all parties, declare in writing that a copy has been served

The written declaration is called a “Proof of Service,” also referred to as a “Certificate of Service.” See subsection (e), below, Appendix G (Sample Proof of Service). See also 8 C.F.R. §§ 1003.17(a), 1003.23(b)(1)(ii), 1003.32(a).

(b) Whom to serve. — For all filings before the Immigration Court, the opposing party must be served. For an alien in proceedings, the opposing party is the Department of Homeland Security (DHS). In most instances, a DHS Chief Counsel or a specific DHS Assistant Chief Counsel is the designated officer to receive service. Parties may contact the Immigration Court for the DHS address. The opposing party is never the Immigration Judge or Immigration Court.

(c) Method of service. — Service on the opposing party may be accomplished by hand-delivery, by U.S. Postal Service, or by commercial courier. Where service on the opposing party is accomplished by hand-delivery, service is complete when the filing is hand-delivered to a responsible person at the address of the individual being served.

Where service on the opposing party is accomplished by U.S. Postal Service or commercial courier, service is complete when the filing is deposited with the U.S. Postal Service or the commercial courier. Note that this rule differs from the rule for filings—filings with the Immigration Court are deemed complete when documents are received by the court, not when documents are mailed. See Chapter 3.1(a)(iii) (Receipt Rule).

(d) Timing of service. — The Proof of Service must bear the actual date of transmission and accurately reflect the means of transmission (e.g., hand delivery, regular mail, overnight mail, commercial courier, etc.). Service must be calculated to allow the other party sufficient opportunity to act upon or respond to served material.

(e) Proof of Service. — A Proof of Service is required for all filings, except filings served on the opposing party during a hearing or jointly-filed motions agreed upon by all parties. See 8 C.F.R. § 1003.17(a), 1003.23(b)(1)(ii), 1003.32(a). See also Appendix G

(Sample Proof of Service). When documents are submitted as a package, the Proof of Service should be placed at the bottom of the package.

(i) Contents of Proof of Service. — A Proof of Service must state:

- the name or title of the party served
- the precise and complete address of the party served
- the date of service
- the means of service (e.g., hand delivery, regular mail, overnight mail, commercial courier, etc.)
- the document or documents being served

A Proof of Service must contain the name and signature of the person serving the document. A Proof of Service may be signed by an individual designated by the filing party, unlike the document(s) being served, which must be signed by the filing party.

(ii) Certificates of Service on applications. — Certain forms, such as the Application for Cancellation of Removal for Certain Permanent Residents (Form EOIR-42A), contain a Certificate of Service, which functions as a Proof of Service. Such a Certificate of Service only functions as a Proof of Service for the form on which it appears, not for any supporting documents filed with the form. If supporting documents are filed with an application containing a Certificate of Service, a separate Proof of Service for the entire submission must be included.

(f) Representatives and service. —

(i) Service on a representative. — Service on a representative constitutes service on the person or entity represented. If an alien is represented by an attorney, the Department of Homeland Security must serve the alien's attorney but need not serve the alien. See 8 C.F.R. § 1292.5(a), Chapter 2 (Appearances before the Immigration Court).

(ii) Service by a represented alien. — Whenever a party is represented, the party should submit all filings and communications to the Immigration Court through the representative. See 8 C.F.R. § 1292.5(a), Chapter 2.1 (Representation Generally).

(g) Proof of Service and Notice of Appearance. — All filings with the Immigration Court must include a Proof of Service that identifies the item being filed, unless served during a hearing. Thus, a completed Proof of Service on a Notice of Entry of Appearance of Attorney or Representative Before the Immigration Court (Form EOIR-28) does not constitute Proof of Service of documents accompanying the Form EOIR-28.

3.3 Documents

(a) Language and certified translations. — All documents filed with the Immigration Court must be in the English language or accompanied by a certified English translation. See 8 C.F.R. §§ 1003.33, 1003.23(b)(1)(I). An affidavit or declaration in English by a person who does not understand English must include a certificate of interpretation stating that the affidavit or declaration has been read to the person in a language that the person understands and that he or she understood it before signing.

A certification of translation of a foreign-language document or declaration must be typed, signed by the translator, and attached to the foreign-language document. A certification must include a statement that the translator is competent to translate the language of the document and that the translation is true and accurate to the best of the translator's abilities. If the certification is used for multiple documents, the certification must specify the documents. The translator's address and telephone number must be included. See Appendix H (Sample Certificate of Translation).

(b) Signatures. — No forms, motions, briefs, or other submissions are properly filed without an original signature from either the alien, the alien's representative, or a representative of the Department of Homeland Security. A Proof of Service also requires a signature but may be filed by someone designated by the filing party. See Chapter 3.2(e) (Proof of Service).

A signature represents a certification by the signer that: he or she has read the document; to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is grounded in fact; the document is submitted in good faith; and the document has not been filed for any improper purpose. See 8 C.F.R. § 1003.102(j)(1). A signature represents the signer's authorization, attestation, and accountability. Every signature must be accompanied by the typed or printed name.

(i) Simulated signatures. — Signature stamps and computer-generated signatures are not acceptable on documents filed with the Immigration Court. These signatures do not convey the signer's personal authorization, attestation, and accountability for the filing. See also Chapters 3.1(a) (Filing), 3.3(d) (Originals and reproductions).

(ii) Law firms. — Except as provided in Chapter 2.3(j) (Appearances “on behalf of”), only an attorney of record—not a law firm, law office, or other attorney—may sign a submission to the Immigration Court. See Chapters 2.3(c) (Appearances), 2.3(e) (Multiple representatives), 2.3(f) (Law firms).

(iii) Accredited representatives. — Accredited representatives must sign their own submissions. See Chapter 2.4(f) (Signatures).

(iv) Paralegals and other staff. — Paralegals and other staff are not authorized to practice before the Immigration Court and may not sign a submission to the Immigration Court. See Chapter 2.6 (Paralegals). However, a paralegal may sign a Proof of Service when authorized by the filing party. See Chapter 3.2(e) (Proof of Service).

(v) Other representatives. — Only those individuals who have been authorized by the Immigration Court to represent a party and have submitted a Notice of Entry of Appearance of Attorney or Representative Before the Immigration Court (Form EOIR-28) may sign submissions to the Immigration Court. See Chapters 2.5 (Law students and Law Graduates), 2.9 (Others).

(vi) Family members. — A family member may sign submissions on behalf of a party only under certain circumstances. See Chapter 2.8 (Family Members).

(c) Format. — The Immigration Court prefers all filings and supporting documents to be typed, but will accept handwritten filings that are legible. Illegible filings will be rejected or excluded from evidence. See Chapter 3.1(d) (Defective filings). All filings must be signed by the filing party. See Chapter 3.3(b) (Signatures).

(i) Order of documents. — Filings should be assembled as follows. All forms should be filled out completely. If a Notice of Entry of Appearance of Attorney or Representative Before the Immigration Court (Form EOIR-28) is required, it should be submitted at the front of the package. See Chapter 2.1(b) (Entering an appearance).

(A) Applications for relief. — An application package should comply with the instructions on the application. The application package should contain (in order):

- (1) Form EOIR-28 (if required)
- (2) cover page
- (3) if applicable, fee receipt (stapled to the application) or motion for a fee waiver

- (4) application
- (5) proposed exhibits (if any) with table of contents
- (6) Proof of Service

See Chapters 2.1(b) (Entering an appearance), 3.2(e) (Proof of Service), 3.3(c)(vi) (Cover page and caption), 3.3(e)(ii) (Publications as evidence), 3.4 (Filing Fees).

(B) Proposed exhibits. — If proposed exhibits are not included as part of an application package, the proposed exhibit package should contain (in order):

- (1) Form EOIR-28 (if required)
- (2) cover page
- (3) table of contents
- (4) proposed exhibits
- (5) Proof of Service

See Chapters 2.1(b) (Entering an appearance), Chapters 3.2(e) (Proof of Service), 3.3(c)(vi) (Cover page and caption), 3.3(e)(ii) (Publications as evidence), 3.4 (Filing Fees).

(C) Witness list. — A witness list package should contain (in order):

- (1) Form EOIR-28 (if required)
- (2) cover page
- (3) witness list (in compliance with the requirements of Chapter 3.3(g) (Witness lists))
- (4) Proof of Service

See Chapters 2.1(b) (Entering an appearance), 3.2(e) (Proof of Service), 3.3(c)(vi) (Cover page and caption).

(D) Motions to reopen. — A motion package for a motion to reopen should contain (in order):

- (1) Form EOIR-28
- (2) cover page
- (3) if applicable, fee receipt (stapled to the motion or application) or motion for a fee waiver
- (4) motion to reopen
- (5) a copy of the Immigration Judge's decision

- (6) if applicable, a motion brief
- (7) if applicable, a copy of the application for relief
- (8) supporting documentation (if any) with table of contents
- (9) Alien's Change of Address Form (Form EOIR-33/IC) (recommended even if the alien's address has not changed)
- (10) a proposed order for the Immigration Judge's signature
- (11) Proof of Service

See Chapters 2.1(b) (Entering an appearance), 2.2(c)(iii) (Motions), 3.2(e) (Proof of Service), 3.3(c)(vi) (Cover page and caption), 3.3(e)(ii) (Publications as evidence), 3.4 (Filing Fees), 5 (Motions before the Immigration Court).

(E) *Motions to reconsider.* — A motion package for a motion to reconsider should contain (in order):

- (1) Form EOIR-28
- (2) cover page
- (3) if applicable, fee receipt (stapled to the motion or application) or motion for a fee waiver
- (4) motion to reconsider
- (5) a copy of the Immigration Judge's decision
- (6) if applicable, a motion brief
- (7) if applicable, a copy of the application for relief
- (8) supporting documentation (if any) with table of contents
- (9) Alien's Change of Address Form (Form EOIR-33/IC) (recommended even if the alien's address has not changed)
- (10) a proposed order for the Immigration Judge's signature
- (11) Proof of Service

See Chapters 2.1(b) (Entering an appearance), 2.2(c)(iii) (Motions), 3.2(e) (Proof of Service), 3.3(c)(vi) (Cover page and caption), 3.3(e)(ii) (Publications as evidence), 3.4 (Filing Fees), 5 (Motions before the Immigration Court).

(F) *Other filings.* — Other filing packages, including pre-decision motions and briefs, should contain (in order):

- (1) Form EOIR-28 (if required)
- (2) cover page
- (3) if applicable, fee receipt (stapled to the filing) or motion for a fee waiver
- (4) the filing
- (5) supporting documentation (if any) with table of contents

- (6) if a motion, a proposed order for the Immigration Judge's signature
- (7) Proof of Service

See Chapters 2.1(b) (Entering an appearance), 3.2(e) (Proof of Service), 3.3(c)(vi) (Cover page and caption), 3.3(e)(ii) (Publications as evidence), 3.4 (Filing Fees).

(ii) Number of copies. — Except as provided in subsection (A) and (B), below, only the original of each application or other submission must be filed with the Immigration Court. For all filings, a copy must be served on the opposing party. See Chapter 3.2 (Service on the Opposing Party). Multiple copies of a filing (e.g., a brief, motion, proposed exhibit, or other supporting documentation) should not be filed unless otherwise instructed by the Immigration Judge.

(A) Defensive asylum applications. — For defensive asylum applications, parties must submit to the Immigration Court the original application and one copy. The copy submitted to the court is sent to the Department of State for review, in accordance with 8 C.F.R. § 1208.11. See Chapter 3.1(b)(ii)(A) (Defensive applications). In addition, a copy must be served on the opposing party. See Chapter 3.2 (Service on the Opposing Party).

(B) Consolidated cases. — In consolidated cases, parties should submit a separate copy of each submission for placement in each individual Record of Proceedings. However, a “master exhibit” may be filed in the lead individual’s file for exhibits and supporting documentation applicable to more than one individual, with the approval of the Immigration Judge.

(iii) Pagination and table of contents. — All documents, including briefs, motions, and exhibits, should always be paginated by consecutive numbers placed at the bottom center or bottom right hand corner of each page.

Whenever proposed exhibits or supporting documents are submitted, the filing party should include a table of contents with page numbers identified. See Appendix P (Sample Table of Contents).

If a party submits more than one filing in a proceeding, the page numbers in later filings should be consecutive with those in the earlier filings. For example, if the respondent has filed a set of documents with page numbers 1 through 50, the next submission of documents should begin with page 51.

Where a party is filing more than one application, the party is encouraged to submit a separate evidence package, with a separate table of contents, for each application.

(iv) Tabs. — Parties should use alphabetic tabs, commencing with the letter “A.” The tabs should be affixed to the right side of the pages. In addition, parties should carefully follow the pagination and table of contents guidelines in subsection (iii), above.

(v) Paper size and document quality. — All documents should be submitted on standard 8 ½" x 11" paper, in order to fit into the Record of Proceedings. See 8 C.F.R. § 1003.32(b). The use of paper of other sizes, including legal-size paper (8 ½" x 14"), is discouraged. If a document is smaller than 8 ½" x 11", the document should be affixed to an 8 ½" x 11" sheet of paper or enlarged to 8 ½" x 11". If a document is larger than 8 ½" x 11", the document should be reduced in size by photocopying or other appropriate means, as authorized by the Immigration Judge. This provision does not apply to documents whose size cannot be altered without altering their authenticity. All documents must be legible. Copies that are so poor in quality as to be illegible may be rejected or excluded from evidence. See Chapter 3.1(d) (Defective filings).

Paper should be of standard stock — white, opaque, and unglazed. Given its fragility and tendency to fade, photo-sensitive facsimile paper should never be used. Ink should be dark, preferably black.

Briefs, motions, and supporting documentation should be single-sided.

(vi) Cover page and caption. — All filings should include a cover page. The cover page should include a caption and contain the following information:

- the name and address of the filing party
- the title of the filing (such as “RESPONDENT’S APPLICATION FOR CANCELLATION OF REMOVAL,” “DHS WITNESS LIST,” “RESPONDENT’S MOTION TO REOPEN”)
- the full name for each alien covered by the filing (as it appears on the charging document)
- the alien registration number (“A number”) for each alien covered by the filing (if an alien has more than one A number,

all the A numbers should appear on the cover page with a clear notation that the alien has multiple A numbers)

- the type of proceeding involved (such as removal, deportation, exclusion, or bond)
- the date and time of the hearing

See Appendix F (Sample Cover Page). If the filing involves special circumstances, that information should appear prominently on the cover page, preferably in the top right corner and highlighted (e.g., “DETAINED,” “JOINT MOTION,” “EMERGENCY MOTION”).

(vii) Fonts and spacing. — Font and type size must be easily readable. “Times Roman 12 point” font is preferred. Double-spaced text and single-spaced footnotes are also preferred. Both proportionally spaced and monospaced fonts are acceptable.

(viii) Binding. — The Immigration Court and the Board of Immigration Appeals use a two-hole punch system to maintain files. All forms, motions, briefs, and other submissions should always be pre-punched with holes along the top (centered and 2 ¾” apart). Submissions may be stapled in the top left corner. If stapling is impracticable, the use of removable binder clips is encouraged. Submissions should neither be bound on the side nor commercially bound, as such items must be disassembled to fit into the record of proceedings and might be damaged in the process. The use of ACCO-type fasteners and paper clips is discouraged.

(ix) Forms. — Forms should be completed in full and must comply with certain requirements. See Chapter 11 (Forms). See also Appendix E (Forms).

(d) Originals and reproductions. —

(i) Briefs and motions. — The original of a brief or motion must always bear an original signature. See Chapter 3.3(b) (Signatures).

(ii) Forms. — The original of a form must always bear an original signature. See Chapters 3.3(b) (Signatures), 11.3 (Submitting completed forms). In certain instances, forms must be signed in the presence of the Immigration Judge.

(iii) Supporting documents. — Photocopies of supporting documents, rather than the originals, should be filed with the Immigration Court and served on the Department of Homeland Security (DHS). Examples of supporting documents include identity documents, photographs, and newspaper articles.

If supporting documents are filed at a master calendar hearing, the alien must make the originals available to DHS at the master calendar hearing for possible forensics examination at the Forensics Documents Laboratory. In addition, the alien must bring the originals to all individual calendar hearings.

If supporting documents are filed after the master calendar hearing(s), the filing should note that originals are available for review. In addition, the alien must bring the originals to all individual calendar hearings.

The Immigration Judge has discretion to retain original documents in the Record of Proceedings. The Immigration Judge notes on the record when original documents are turned over to DHS or the Immigration Court.

(iv) Photographs. — If a party wishes to submit a photograph, the party should follow the guidelines in subsection (iii), above. In addition, prior to bringing the photograph to the Immigration Court, the party should print identifying information, including the party's name and alien registration number (A number), on the back of the original photograph.

(e) Source materials. — Source materials should be provided to the Immigration Court and highlighted as follows.

(i) Source of law. — When a party relies on a source of law in any filing (e.g., a brief, motion, or pre-trial statement) that is not readily available, that source of law should be reproduced and provided to the Immigration Court and the other party, along with the filing. Similarly, if a party relies on governmental memoranda, legal opinions, advisory opinions, communiques, or other ancillary legal authority or sources in any filing, copies of such items should be provided to the Immigration Court and the other party, along with the filing.

(ii) Publications as evidence. — When a party submits published material as evidence, that material must be clearly marked with identifying information, including the precise title, date, and page numbers. If the publication is difficult to locate, the submitting party should identify where the publication can be found and authenticated.

In all cases, the party should submit title pages containing identifying information for published material (e.g., author, year of publication). Where a title page is not available, identifying information should appear on the first page of the document. For example, when a newspaper article is submitted, the front page of the newspaper, including the name of the newspaper and date of publication, should be submitted where available, and the page on which the article appears should be identified. If the front page is not available, the name of the newspaper and the publication date should be identified on the first page of the submission.

Copies of State Department Country Reports on Human Rights Practices, as well as the State Department Annual Report on International Religious Freedom, must indicate the year of the particular report.

(iii) Internet publications. — When a party submits an internet publication as evidence, the party should follow the guidelines in subsection (ii), above, as well as provide the complete internet address for the material.

(iv) Highlighting. — When a party submits secondary source material (“background documents”), that party should highlight or otherwise indicate the pertinent portions of that secondary source material. Any specific reference to a party should always be highlighted.

(f) Criminal conviction documents. — Documents regarding criminal convictions must comport with the requirements of 8 C.F.R. § 1003.41. Where the respondent has multiple criminal arrests, prosecutions, or convictions, the party with the burden of proof must submit a criminal history chart and attach all pertinent documentation, such as arrest and conviction records. The criminal history chart should contain the following information for each arrest:

- arrest date
- court docket number
- charges
- disposition
- immigration consequences, if any

The documentation should be paginated, with the corresponding pages indicated on the criminal history chart. See Appendix O (Sample Criminal History Chart).

(g) *Witness lists.* — A witness list should include the following information for each witness, except the respondent:

- the name of the witness
- if applicable, the alien registration number (“A number”)
- a written summary of the testimony
- the estimated length of the testimony
- the language in which the witness will testify
- a curriculum vitae or resume, if called as an expert

3.4 Filing Fees

(a) *Where paid.* — Fees for the filing of motions and applications for relief with the Immigration Court, when required, are paid to the Department of Homeland Security as set forth in 8 C.F.R. § 1103.7. The Immigration Court does not collect fees. See 8 C.F.R. §§ 1003.24, 1103.7.

(b) *Filing fees for motions.* —

(i) *When required.* — The following motions require a filing fee:

- a motion to reopen (except a motion that is based exclusively on a claim for asylum)
- a motion to reconsider (except a motion that is based on an underlying claim for asylum)

8 C.F.R. §§ 1003.23(b)(1), 1003.24, 1103.7. For purposes of determining filing fee requirements, the term “asylum” here includes withholding of removal (“restriction on removal”), withholding of deportation, and claims under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

Where a filing fee is required, the filing fee must be paid in advance to the Department of Homeland Security and the fee receipt must be submitted with the motion.

If a filing party is unable to pay the fee, he or she should request that the fee be waived. See subsection (d), below.

(ii) When not required. — The following motions do not require a filing fee:

- a motion to reopen that is based exclusively on a claim for asylum
- a motion to reconsider that is based on an underlying a claim for asylum
- a motion filed while proceedings are pending before the Immigration Court
- a motion requesting only a stay of removal, deportation, or exclusion
- a motion to recalendar
- any motion filed by the Department of Homeland Security
- a motion that is agreed upon by all parties and is jointly filed ("joint motion")
- a motion to reopen a removal order entered in absentia if the motion is filed under INA § 240(b)(5)(C)(ii)
- a motion to reopen a deportation order entered in absentia if the motion is filed under INA § 242B(c)(3)(B), as it existed prior to April 1, 1997
- a motion filed under law, regulation, or directive that specifically does not require a filing fee

8 C.F.R. §§ 1003.23(b)(1), 1003.24, 1103.7. For purposes of determining filing fee requirements, the term "asylum" here includes withholding of removal ("restriction on removal"), withholding of deportation, and claims under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

(c) Application fees. —

(i) When required. — When an application for relief that requires a fee is filed during the course of proceedings, the fee for that application must be paid in advance to the Department of Homeland Security (DHS). Instructions for paying application fees can be found in the DHS biometrics instructions, which are available on the Executive Office for Immigration Review website at www.usdoj.gov/eoir. A fee receipt must be submitted when the application is filed with the Immigration Court.

If a filing party is unable to pay the fee, the party should file a motion for a fee waiver. See subsection (d), below.

(ii) When not required. — When an application for relief that requires a fee is the underlying basis of a motion to reopen, the fee for the application need not be paid to the Department of Homeland Security (DHS) in advance of the motion to reopen. Rather, only the fee for the motion to reopen must be paid in advance. The fee receipt for the motion to reopen must be attached to that motion. See subsection (b)(i), above. If the motion to reopen is granted, the fee for the underlying application must then be paid to DHS and that fee receipt must be submitted to the Immigration Court. See Chapter 3.1(c) (Must be “timely”).

(d) When waived. — When a fee to file an application or motion is required, the Immigration Judge has the discretion to waive the fee upon a showing that the filing party is unable to pay the fee. However, the Immigration Judge will not grant a fee waiver where the application for relief is a Department of Homeland Security (DHS) form and DHS regulations prohibit the waiving of such fee. See 8 C.F.R. §§ 103.7, 1103.7.

Fee waivers are not automatic. The request for a fee waiver must be accompanied by a properly executed affidavit or unsworn declaration made pursuant to 28 U.S.C. § 1746, substantiating the filing party’s inability to pay the fee. If a filing is submitted without a required fee and the request for a fee waiver is denied, the filing will be deemed defectively filed and may be rejected or excluded from evidence. See Chapter 3.1(d) (Defective filings).

Fees are not reimbursed merely because the application or motion is granted.

(e) Amount of payment. —

(i) Motions to reopen or reconsider. — When a filing fee is required, the fee for motions to reopen or reconsider is \$110. 8 C.F.R. § 1103.7(b)(2). The fee

is paid to the Department of Homeland Security in advance. The fee receipt and motion are then filed with the Immigration Court.

(ii) Applications for relief. — Application fees are found in the application instructions and in the federal regulations. See 8 C.F.R. §§ 103.7, 1103.7(b)(1). See also Chapter 11 (Forms), Appendix E (Forms).

(iii) Background and security checks. — The Department of Homeland Security (DHS) biometrics fee is found in the DHS biometrics instructions provided to the aliens in the Immigration Court. 8 C.F.R. § 1003.47(d). The Immigration Judge cannot waive the DHS biometrics fee.

(f) Payments in consolidated proceedings. —

(i) Motions to reopen and reconsider. — Only one motion fee should be paid in a consolidated proceeding. For example, if several aliens in a consolidated proceeding file simultaneous motions to reopen, only one motion fee should be paid.

(ii) Applications for relief. — To determine the amount of the fee to be paid for applications filed in consolidated proceedings, the parties should follow the instructions on the application. In some cases, a fee is required for each application. For example, if each alien in a consolidated proceeding wishes to apply for cancellation of removal, a fee is required for each application.

(g) Form of payment. — When a fee is required to file an application for relief or a motion to reopen or reconsider, the fee is paid to the Department of Homeland Security and the form of the payment is governed by federal regulations. See 8 C.F.R. § 103.7.

(h) Defective or missing payment. — If a fee is required to file an application for relief or motion but a fee receipt is not submitted to the Immigration Court (for example, because the fee was not paid in advance to the Department of Homeland Security), the filing is defective and may be rejected or excluded from evidence. If a fee is not paid in the correct amount or is uncollectible, the filing is defective and may be rejected or excluded from evidence. See Chapter 3.1(d) (Defective filings).

